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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,295	07/31/2003	Jeffrey H. Wood	BOI-0259US	3327
60483	7590	11/01/2006	EXAMINER	
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/633,295

Applicant(s)

WOOD ET AL.

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-11,13-26 and 28-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4, 12 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This application remains 43 claims numbered 1-43. Claims 3, 5-11, 13-26 and 28-43 were previously withdrawn. Claims 1-2, 4, 12 and 27 will examine as follows:

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/23/06 has been entered.

#### ***Claim Objections***

Claim 1 is objected to because it is not clear whether the adhesive tape is claimed or not. It appears that the adhesive tape is mentioned only in functional statement and not part of the bracket. Therefore the size of the separation features cannot be pre-determined since there is no adhesive claimed.

Claim 4 is objected to because it lacks of antecedent basis. "the separation component " as recited in line 1 should be changed to – the separation feature --  
Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4, 12 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent no. 6,195,811 to Dragovic.

As to claims 1-2 and 27, Dragovic teaches a bracket (see Fig. 2-7, for example) substantially as claimed which comprises a first portion (21); a second portion (23) wherein a second portion includes a plurality of separation features (25, 27) (Fig. 3), the separation features including at least one of dimples and ridges (see attached Figure 6), the separation features maintain separation by a predetermined amount. Dragovic also teaches an adhesive tape adhering between the second portion and the support structure, therefore the size of plurality of separations features is inherently based on an amount of adhesive (37).

Dragovic meets claims 1-2, 27 because Dragovic teaches each positively claimed element in the claim. On the one hand, the determination of patentability of Applicant's product-by-process claim is based on the product itself, not by its method of production. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985); *SmithKline Beecham Corp. v. Apotex Corp.*, Fed. Cir., No. 04-1522, 2/24/2006; and MPEP 2113.

Art Unit: 3632

As to claims 4 and 12, Dragovic also teaches the separation feature including a plurality of dimples (see Fig. 6) and the bracket can be either formed by one of molding or extruding (see Col. 2, 25-29).

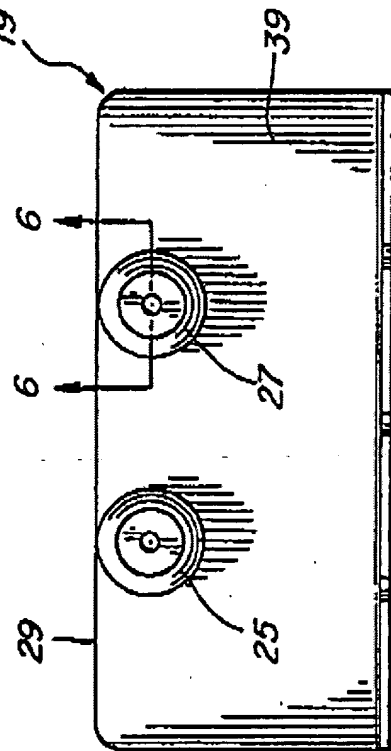
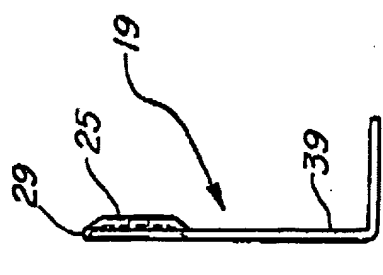
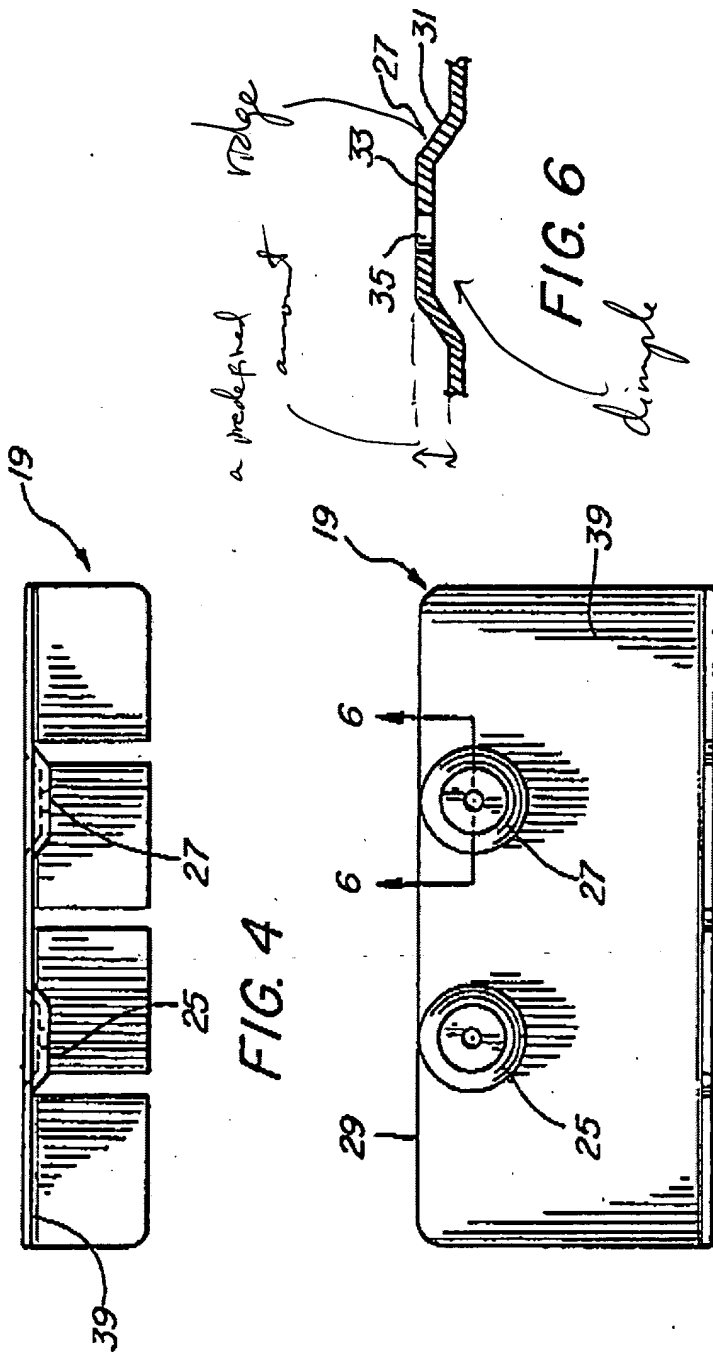


FIG. 3

FIG. 5

### ***Response to Arguments***

Applicant's arguments filed 6/24/06 have been fully considered but they are not persuasive.

In response to Applicant's argument that Neither Dragovic nor Hara (Note that the examiner will not use the reference of Hara at this time, therefore argument on Hara is moot) discloses that dimples or ridges are sized based on an amount of adhesive use in adhering a second portion to a support structure" ((page 13 of the Remarks). The examiner respectfully disagrees with this argument: (a), the phrase such as "are sized or configured based on an amount of adhesive used in adhering a second portion to a structure" is merely an intended used functional expression which does not defined any structure and accordingly can not serve to distinguish and thus could not have patentable significance; (b), "the size of the plurality of separation features is *based on an amount of adhesive used in the process of adhering the second portion to the support structure*" is merely a product-by-process claim in an article /product/apparatus claim. It adds nothing and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. It is well settled that the patentability of a product does not depend on its method of production. Product -by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 USPQ 15. In vie w of the above reasons, the examiner contends that the argument is not persuasive and the claims are therefore still rejected as being anticipated by Dragovic.

**Conclusion**

**THIS ACTION IS MADE NON\_FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818.

The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tan Le  
October 26, 2006



Carl D. Friedman  
Patent Examiner  
Sup 3600